

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LINDA DARCELL GILBERT,

Defendant.

Case No. CR06-0106

REPORT AND RECOMMENDATION

On the 23rd day of March 2010, this matter came on for telephonic hearing pursuant to the Request for Hearing (docket number 183) filed by the Plaintiff on September 3, 2009.¹ The Government was represented by Assistant United States Attorney Martin J. McLaughlin. Defendant Linda Darcell Gilbert appeared telephonically and was unrepresented by counsel.²

RELEVANT FACTS AND PROCEEDINGS

Defendant was sentenced on July 24, 2007, following her conviction for possession of an unregistered firearm. In addition to 108 months of imprisonment, Defendant was ordered to pay a fine in the amount of \$3,500, plus a \$100 special assessment. *See* docket number 140. The judgment provided on page 6 that the total of \$3,600 was “due immediately.” In addition, the judgment ordered Defendant to make monthly payments in accordance with the Bureau of Prisons’ financial responsibility program.

¹ On February 19, 2010, the motion was referred to the undersigned Magistrate Judge for a report and recommendation. *See* docket number 184.

² The hearing was held telephonically because Defendant is currently incarcerated at the Federal Prison Camp in Pekin, Illinois.

After being placed in the custody of the Bureau of Prisons, Defendant signed an agreement to pay \$25 per month toward her obligation. In that manner, Defendant paid \$475 toward the judgment. In addition, however, the Government garnished a pension account held in Defendant's name at the Principal Financial Group. On August 20, 2009, the Principal Financial Group paid \$3,125 to the Court, satisfying Defendant's judgment in full.³

A judgment imposing a fine may be enforced by the United States in the same manner as any other civil judgment. 18 U.S.C. § 3613(a). As noted by Mr. McLaughlin at the time of hearing, the government may enforce its lien against assets which may otherwise be exempt from execution on regular civil judgments. 18 U.S.C. § 3613(c). That is, the Government is not prohibited from seeking garnishment of the pension account held in Defendant's name at the Principal Financial Group.

At the time of hearing, Defendant indicated that she was initially confused regarding why the Government would garnish her pension account, when she was paying monthly pursuant to her agreement with the Bureau of Prisons. Defendant accepted Mr. McLaughlin's explanation regarding the Government's right to pursue garnishment, however, and agreed that since the judgment has now been paid in full, no further action is required. That is, Defendant does not challenge the Government's right to garnish her pension account. To the extent that Defendant's letter to the United States Attorney, dated July 29, 2009, can be considered an objection to the garnishment, it should be denied as moot.⁴

³ At the time of hearing, Mr. McLaughlin confirmed that the judgment has been satisfied in full. Similarly, Defendant confirmed that prison officials are no longer withholding \$25 per month toward this obligation.

⁴ A copy of the letter is attached to the Government's instant request for hearing. *See* docket number 183-1.

RECOMMENDATION

For the reasons set forth above, it is respectfully **RECOMMENDED** that the district court deny as moot the objection to garnishment (docket number 183-1) attached to the Government's request for hearing. The parties are advised, pursuant to 28 U.S.C. § 636(b)(1), that within fourteen (14) days after being served with a copy of this Report and Recommendation, any party may serve and file written objections with the district court. *The parties are reminded that pursuant to Local Rule 72.1, "[a] party asserting such objections must arrange promptly for a transcription of all portions of the record the district court judge will need to rule on the objections."* Accordingly, *if the parties are going to object to this Report and Recommendation, they must promptly order a transcript of the hearing held on March 23, 2010.*

The Clerk of Court shall provide a copy of this Report and Recommendation to Linda Gilbert, #09879-029, Federal Prison Camp, P.O. Box 5000, Pekin, Illinois 61555-5000.

DATED this 23rd day of March, 2010.



JON STUART SCOLES
UNITED STATES MAGISTRATE JUDGE
NORTHERN DISTRICT OF IOWA